



**Commissioner of Investigations & Enforcement v Kiraba (Income Tax Appeal E011 of 2025)
[2025] KEHC 11328 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11328 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E011 OF 2025**

FG MUGAMBI, J

JULY 31, 2025

BETWEEN

COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT APPELLANT

AND

CHARLES WARUTERE KIRABA RESPONDENT

JUDGMENT

Background and Introduction

1. This is an appeal against the decision of the Tax Appeals Tribunal [the Tribunal] delivered on 22nd November 2024. The appellant [hereinafter the Commissioner] investigated the affairs of the respondent, culminating in the issuance of a notice of additional assessment dated 26th October 2021.
2. In response, the respondent lodged a notice of objection via a letter dated 18th November 2021, and an objection decision was subsequently issued by the Commissioner on 18th March 2022. Dissatisfied with the objection decision, the respondent filed an appeal before the Tribunal, which, in a judgment delivered on 22nd November 2024, allowed the appeal.
3. Aggrieved by the Tribunal's decision, the Commissioner has now filed the present appeal vide a memorandum of appeal dated 16th January 2025. The grounds within which this appeal is founded are as follows:
 - i. That the Honourable Tribunal erred in law and fact determining that the Appellant's Objection Decision issued on 18th March 2022 was out of time whereas the same was in compliance with the provisions of Section 51[11] of the [Tax Procedures Act](#);
 - ii. That the Honourable Tribunal erred in law and fact in failing to determine that the statutory time for issuance of the Objection Decision was from the last date of engagement and provision



of additional documents which was 17th January 2022 as provided for in the [Tax Procedures Act](#) then, prior to the amendments introduced in 2022;

- iii. That the Honourable Tribunal misdirected itself on both facts and law, and thereby arrived at wrong, erroneous and absurd findings/decision.
4. The respondent opposed the appeal vide a statement of facts dated 26th June 2025. His position is that the Tribunal correctly found that the appellant's objection decision dated 18th March 2022 was issued out of time, in contravention of Section 51[11] of the [Tax Procedures Act](#) [TPA], and was therefore invalid. The respondent contends that there was no intervening event to justify the delay, and that the emails relied upon by the appellant to extend the time frame were neither submitted nor admitted as evidence before the Tribunal.
5. The respondent further argues that the underlying tax assessment was based on flawed assumptions, particularly the wrongful classification of bank deposits as sales, despite his role as a broker earning only commissions. He maintains that the assessment lacked a proper evidentiary foundation and denied him a fair opportunity to clarify the nature of transactions, thereby violating procedural fairness. On these grounds, the respondent supports the Tribunal's decision and prays that the present appeal be dismissed with costs.
6. The Commissioner on the other hand submits that that the objection decision issued on 18th March 2022 was valid, having been issued within the 60-day period provided under Section 51[11] of the [TPA](#), as amended by the Finance Act 2019. According to the appellant, the 60-day period began running on 19th January 2022 when the respondent submitted final documents during their correspondence. The appellant submits that the Tribunal erred in ruling the decision as time-barred.
7. On the substantive assessment, the Commissioner defends the use of the banking test to determine taxable income, having found significant undeclared bank deposits totaling Kshs. 1.8 billion, which were treated as trading income in the absence of sufficient documentation or reconciliation by the respondent. The Commissioner maintains that the assessment and objection decision were based on thorough investigations, lawful procedures, and the respondent's failure to keep or produce records as required under tax laws.
8. Furthermore, the Commissioner justifies disallowing the respondent's claimed business expenses and input VAT, citing lack of supporting documents and expiry of statutory timelines. It submits that the assessment was legally sound, the burden of proof lay with the respondent, and prays that the Court upholds the assessment and allows the appeal with costs.

Analysis and Determination

9. I have carefully considered the parties' submissions alongside the record of appeal. The central issue for determination in this appeal is whether the Commissioner's objection decision dated 18th March 2022 was issued within the statutory timeline prescribed under Section 51[11] of the [TPA](#) and whether the Tribunal erred in holding that the decision was rendered out of time.
10. As presently framed, Section 51[11] of the [TPA](#) provides:

“The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.”



11. Prior to its amendment, the same provision stated:

“The commissioner shall make the objection decision within sixty days from the date of receipt of:

[a] the notice of objection

[b] any further information the commissioner may require from the tax payer failure to which the objection shall be deemed to be allowed”

12. The amendment introduced through the *Finance Act, 2022*, came into effect from 1st July 2022. It removed the requirement that the 60-day timeline begins only after the taxpayer has submitted any further information requested by the Commissioner. The statutory clock now begins to run from the date the notice of objection is lodged, regardless of any subsequent requests for information.
13. In the present case, however, the objection decision dated 18th March 2022 predates the coming into force of the amendment. Accordingly, it falls to be determined under the previous legal framework, namely that enacted under the Finance Act, 2019, which permitted the Commissioner to render the objection decision within sixty days of receiving both the notice of objection and any further information requested.
14. The Commissioner submits that prior to issuing the objection decision, the parties engaged in correspondence via letters and emails, culminating in the final submission of documents on 19th January 2022. On this basis, the Commissioner argues that the 60-day period commenced from that date, rendering the objection decision of 18th March 2022 timeous.
15. The Tribunal, however, found that there was no evidence on record to support the assertion that further documents or information were requested or exchanged between the date of lodging the objection, 18th November 2021, and the date the objection decision was issued, 18th March 2022. It concluded that no communication during that period indicated a request for additional documents that would have recalibrated the statutory timeline.
16. The Tribunal therefore held that the Commissioner was required to render its objection decision by 17th January 2022, being sixty days from the date of receipt of the notice of objection. While the Commissioner claimed there was ongoing correspondence that extended the time, no such evidence was presented before the Tribunal.
17. Upon my own review of the record of appeal, I confirm that the documents filed and relied upon to support claims of further information exchange date back to the period between December 2020 and May 2021. No communication was produced to demonstrate that any further documentation was requested or submitted after 18th November 2021, thereby warranting a recalibration of the statutory period.
18. The Tribunal, in basing its decision on the material properly placed before it, acted within the confines of the law. In the absence of evidence to trigger Section 51[11][b], the Tribunal correctly found that the respondent’s objection was deemed allowed by operation of law. This position finds firm support in judicial precedent. In *Equity Group Holdings Limited v Commissioner of Domestic Taxes*, [CA Nos. E069 & E025 of 2020] [2021] eKLR, the Court observed:

“Section 51 [11] of the *TPA* is couched in peremptory terms. Having correctly found that the decision was made after the expiry of 60 days, the TAT had no legal basis to proceed as it did and to invoke article 159[2] [d]. First, there was no decision at all. The decision had



ceased to exist by operation of the law. Second, the provisions of section 51 [11] [b] had kicked in. The Objection had by dint of the said provision been deemed as allowed. ...”

19. Similarly, in *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement*, [ITA No. E068 of 2020] [2023] KEHC 20000 [KLR]:

“... Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the Commissioner is allowed to exercise his discretion and stay ad-indefinitum before issuing an objection decision, the tax payer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality.”

20. It is trite that a Tribunal can only determine a matter based on the record placed before it. Any attempt to rely on additional material not presented at the hearing would amount to the introduction of new evidence at the appellate stage, which is impermissible. Accordingly, the Tribunal cannot be faulted for concluding that the objection decision was rendered outside the statutory period and that the respondent’s objection was, by operation of law, deemed allowed pursuant to Section 51[11] of the *TPA*.

Disposition

21. In the circumstances, I find that the Commissioner’s objection decision dated 18th March 2022 was rendered out of time and is therefore invalid.
22. The decision of the Tax Appeals Tribunal is hereby upheld and the appeal is dismissed.
23. Each party shall bear its own costs of the appeal. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2025

F. MUGAMBI

JUDGE

